

### **REMARKS/ARGUMENTS**

Claims 1, 4-19, 30, 33-49, 66 and 69-84 are currently pending in the application. Claims 20-29, 50-65 and 85-94 have been withdrawn in response to a restriction requirement with traverse. Claims 2-3, 31-32 and 67-68 have been canceled without prejudice. Claims 1-19, 30-49 and 66-84 were rejected in the Office Action mailed December 10, 2008 (hereinafter referred to as "Office Action").

A petition for a two month extension of time is being submitted herewith along with a credit card authorization for the required fees to extend the due date until May 10, 2008. Applicants respectfully submit that this response is timely filed on Monday, May 12, 2008 because the extended due date fell on Saturday, May 10, 2008.

In view of the following remarks and amendments, applicants respectfully request a timely Notice of Allowance be issued in this case.

#### ***Claim Rejections under 35 U.S.C. § 102***

The Office Action rejected claims 1-2, 5-6, 9-12, 15, 30-31, 34-36, 39-42, 45, 66-67, 70-71, 74-77 and 80 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Number 6,153,943 to Mistr, Jr. (hereinafter referred to as "Mistr"). For anticipation, a single reference ***must identically disclose every element*** of the claimed invention. *Corning Glass Works v. Sumitomo Electric*, 9 USPQ 2d 1962, 1965 (Fed. Cir.1989). A reference that excludes a claimed element, no matter how insubstantial or obvious, is enough to negate anticipation. *Connell v. Sears, Roebuck & Co.*, 220 USPQ 193, 198 (Fed. Cir.1983). Applicant respectfully submits that claims 1, 5-6, 9-12, 15, 30, 34-36, 39-42, 45, 66, 70-71, 74-77 and 80 are not anticipated by Mistr and are allowable under 35 U.S.C. § 102(e) for the reasons stated below.

#### ***Claims 1, 30 and 66***

Applicant respectfully submits that Mistr does not identically disclose all the elements recited in claims 1, 30 and 66, as amended. The Office Action indicated that "[i]t would have been obvious . . . to modify Mistr, Jr. to include determining whether a user has overridden switching the device or delivery point to the selected power source" (page 5, lines 12-14). As a result, applicant respectfully submits that Mistr does not identically disclose "determining (i) whether it is profitable to switch the device or delivery point to the selected power source based on a projected potential revenue and a projected cost associated with switching to the selected power source, a time period and one or more guidelines and (ii) whether a user has overridden switching the device or delivery point to the selected power source" as recited in claims 1, 30 and 66, as amended.

In addition and as will be described in detail with respect to the Section 103 rejections, applicant respectfully submits that Mistr does not identically disclose "sending

one or more signals to the one or more switches or couplings to electrically or physically switch the device or delivery point to the selected power source whenever it is profitable to switch the device or delivery point to the selected power source and the user has not overridden switching the device or delivery point to the selected power source” as recited in claims 1, 30 and 66, as amended.

For all the foregoing reasons, applicant respectfully submits that Mistr does not identically disclose each and every element recited in claims 1, 30 and 66, as amended. Accordingly, applicant respectfully submits that amended claims 1, 30 and 66 are not anticipated by Mistr and are, therefore, allowable under 35 U.S.C. § 102(e). Applicant respectfully requests that the rejection of claims 1, 30 and 66 be withdrawn.

***Claims 5-6, 9-12, 15, 34-36, 39-42, 45, 70-71, 74-77 and 80***

Applicant respectfully submits that claims 5-6, 9-12, 15, 34-36, 39-42, 45, 70-71, 74-77 and 80 depend from claims 1, 30 and 66, which are allowable for the reasons stated above, and further distinguish over the cited references. Therefore, claims 2 and 5-7 are allowable under 35 U.S.C. § 102(e). Accordingly, Applicant respectfully requests that any rejection of claims 5-6, 9-12, 15, 34-36, 39-42, 45, 70-71, 74-77 and 80 be withdrawn.

***Claim Rejections under 35 U.S.C. § 103***

The Office Action rejected claims 3-4, 13, 32-33, 43, 68-69 and 78 under 35 U.S.C. § 103(a) as being unpatentable over Mistr in view of U.S. Patent No. 4,802,100 to Aasen et al. (hereinafter referred to as “Aasen”). Applicant respectfully submits that the cited references fail to meet the required standard of rejection under 35 U.S.C. § 103 because the combination of Mistr and Aasen, either alone or in combination do not disclose, teach or suggest each and every limitation of claims 1, 4-19, 30, 33-49, 66 and 69-84, as amended, for at least the following reasons.

***Claims 1, 30 and 66***

The Office Action indicated that Mistr discloses “determining whether it is profitable to switch the device or delivery point to the selected power source” (page 3, lines 18-19). Mistr discloses:

Additionally, a natural gas supplier 92 supplying gas to a pipeline 15 may also include a communication device 94 for communication with the computer to supply gas through gas lines 90, 90' in order to allow the control computer 60 to monitor gas rates in the same manner as electricity rates are monitored. By maintaining real time values of energy costs, the computer can calculate the optimum system operational mode for the energy generation and storage apparatus of the present invention and control operation thereof ***in order to minimize energy costs to the user.***

For example, should the computer indicate that a first energy supplier 72 is offering power at rates that are less than a second energy supplier 84, ***the system can acquire power from that supplier without the energy storage apparatus being online.*** Should the cost become sufficiently less economical, the present invention can bring the system online to provide supplementary or substitute electric power. Further, the computer can determine the lowest rates at any given time to obtain power at these low rates to provide a charge to the air system of the present invention thereby storing this energy at a lower cost than would be realized had the energy been consumed at the higher rates.

(col. 13, lines 28-49 (emphasis added)). Applicant respectfully submits that Mistr does not disclose, teach or suggest “determining (i) whether it is ***profitable*** to switch the device or delivery point to the selected power source ***based on a projected potential revenue and a projected cost associated with switching to the selected power source, a time period and one or more guidelines***” as recited in claims 1, 30 and 66. Instead Mistr is designed to minimize costs to the user, provide power conditioning and substitute power. Applicant respectfully submits that Aasen does not cure these deficiencies of Mistr.

In addition, Mistr’s comparison of energy rates does not result in “***sending one or more signals to the one or more switches or couplings to electrically or physically switch the device or delivery point to the selected power source*** whenever it is profitable to switch the device or delivery point to the selected power source” as recited in claims 1, 30 and 66. As shown in Figures 1 and 2 of Mistr, there is only one AC power source 36 connected to the system 100. Accordingly, “acquir[ing] power from that supplier” is a contractual change and does not involve sending a signal to operate one or more switches. Furthermore, operating switch 42 will isolate the system from the power grid 70 and eliminate all of the energy suppliers on the power grid 70 from supplying power to the system 100 (Figure 2). Applicant respectfully submits that Aasen does not cure these deficiencies of Mistr.

Moreover, MPEP Section 2143.01 (VI) states “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” Applicant respectfully submits that claims 1, 30 and 66 are not obvious in view of Mistr because modifying Mistr to perform the steps recited in claims 1, 30 and 66 would change the Mistr’s principle of operation.

For all the foregoing reasons, applicant respectfully submits that Mistr and Aasen do not, either alone or in combination disclose, teach or suggest each and every element recited in claims 1, 30 and 66, as amended. Accordingly, applicant respectfully submits that amended claims 1, 30 and 66 are not obvious over the cited references and are,

therefore, allowable under 35 U.S.C. § 103(a). Applicant respectfully requests that the rejection of claims 1, 30 and 66 be withdrawn.

***Claims 5-6, 9-12, 15, 34-36, 39-42, 45, 70-71, 74-77 and 80***

Applicant respectfully submits that claims 5-6, 9-12, 15, 34-36, 39-42, 45, 70-71, 74-77 and 80 depend from claims 1, 30 and 66, which are allowable for the reasons stated above, and further distinguish over the cited references. Therefore, claims 5-6, 9-12, 15, 34-36, 39-42, 45, 70-71, 74-77 and 80 are allowable under 35 U.S.C. § 103(a). Accordingly, Applicant respectfully requests that any rejection of claims 5-6, 9-12, 15, 34-36, 39-42, 45, 70-71, 74-77 and 80 be withdrawn.

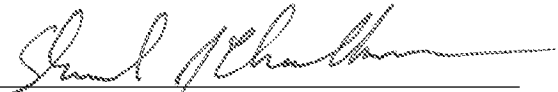
***Conclusion***

For the reasons set forth above, applicant respectfully requests reconsideration by the examiner and withdrawal of the restriction requirement. Applicant submits that claims 1, 4-19, 30, 33-49, 66 and 69-84 are fully patentable. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the examiner has any questions or comments, or if further clarification is required, it is requested that the examiner contact the undersigned at the telephone number listed below.

Date: May 12, 2008

Respectfully submitted,

CHALKER FLORES, LLP

By 

Daniel J. Chalker  
Reg. No. 40,552  
Tel.: (214) 866-0001  
Fax: (214) 866-0010

2711 LBJ Frwy, Suite 1036  
Dallas, Texas 75234